

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of a Smart Grid System.

Rulemaking 08-12-009
(Filed December 18, 2008)

**DECISION GRANTING INTERVENOR COMPENSATION TO THE CONSUMER
FEDERATION OF CALIFORNIA FOR SUBSTANTIAL CONTRIBUTION TO
DECISION 14-05-016**

Claimant: Consumer Federation of California	For contribution to Decision (D.) 14-05-016
Claimed: \$42,944.50	Awarded: \$35,509.00 (reduced 19.2%)
Assigned Commissioner: Michael Picker	Assigned ALJ: ALJ Division¹

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	This decision adopts rules that provide access to energy usage and usage-related data to local government entities, researchers, and state and federal agencies when such access is consistent with state law and California Public Utilities Commission (Commission or CPUC) procedures that protect the privacy of consumer data.
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**B. Claimant must satisfy intervenor compensation requirements set forth in
Pub. Util. Code §§ 1801-1812:**

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	March 27, 2009	Verified
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	April 16, 2009	Verified
4. Was the NOI timely filed?		Yes

¹ Timothy J. Sullivan was the Assigned ALJ.

PROPOSED DECISION

Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.13-02-008	Verified
6. Date of ALJ ruling:	October 25, 2013	Verified
7. Based on another CPUC determination (specify):	N/A	
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.13-02-008	Verified
10. Date of ALJ ruling:	October 25, 2013	Verified
11. Based on another CPUC determination (specify):	N/A	
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.14-05-016	Yes
14. Date of Issuance of Final Order or Decision:	May 05, 2014	Yes
15. File date of compensation request:	June 27, 2014	Yes
16. Was the request for compensation timely?		Verified

C. Additional Comments on Part II:

#	Claimant	CPUC	Comment
	X		The ACR 11/13/12 held that “Consistent with Rule 17.2, parties that were found eligible for an award of compensation previously in this proceeding remain eligible for an award in this new phase of the proceeding without a new demonstration of eligibility.” CFC filed its NOI on 4/16/09. In an ALJ Ruling on 5/13/09 CFC’s NOI was granted including meeting the eligibility requirements relating to being a customer and establishing significant financial hardship.

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant's contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
CFC	The ACR 11/13/12 held that "Consistent with Rule 17.2, parties that were found eligible for an award of compensation previously in this proceeding remain eligible for an award in this new phase of the proceeding without a new demonstration of eligibility." CFC filed its NOI on 4/16/09. In an ALJ Ruling on 5/13/09 CFC's NOI was granted including meeting the eligibility requirements relating to being a customer and establishing significant financial hardship.	
1. Energy Data Center CFC strongly opposed creation of an Energy Data Center (EDC) arguing that the Commission should develop and impose standards on the utilities for the collection, management and effective dissemination of data to third parties. CFC also expressed concerns with any plans to have ratepayers pay for not only any EDC that may be approved but the collection, storage, and dissemination of any data. The Commission agreed with CFC's reasoning and did not approve the creation of an EDC. Instead, D.14-05-016 developed criteria as to who would be allowed access to and the conditions for access of energy data including requiring the utilities standardization of many of the	Opening Comments of the Consumer Federation of California on the Working Group Report on Energy Usage Data, pp. 3-4.	Verified

features involved in the collection and dissemination of data.	D.14-05-016, pp. 14; 2-4; Footnote 21.	
<p>2. Privacy</p> <p>The development of rules to permit the safe and private sharing of customer energy data with appropriate entities was another central issue of this proceeding.</p> <p>Several parties advocated that making customer energy usage data available to them served such important policy interests that it outweighed the protection of customer privacy.</p> <p>These parties included university researchers, local governments, as well as private enterprises. CFC strongly argued customer privacy protection outweighed the interests of all of these parties. CFC urged the Commission to make it clear privacy should trump other possible economic and personal benefits in the absence of policy which makes sure customer data is fully anonymized and aggregated to ensure personally identifiable information (PII) is not revealed.</p> <p>CFC also argued that certain entities had a reasonable interest in accessing usage data so long as appropriate safeguards are in place to ensure customer privacy. For example, CFC supported release of anonymized and aggregated non-PII to local and other government agencies as</p>	<p>Opening Comments of the Consumer Federation of California on the Working Group Report on Energy Usage Data, pp. 1-3.</p> <p>Reply Comments of the Consumer Federation of California on the Working Group Report on Energy Usage Data, pp.2-5.</p> <p>Opening Comments of the Consumer Federation of California on the Working Group Report on Energy Usage Data, p. 4.</p>	<p>Verified, however duplicative of other parties. Other parties, such as the Electronic Frontier Foundation provided much more in depth discussions the importance of privacy to consumers.</p>

<p>well as appropriate university-affiliated research institutions; all subject to appropriate privacy safeguards. However, CFC was and is opposed to release of usage data to non-IOU entities for <i>commercial purposes</i> like energy efficiency applications or solar installations companies to identify prospective customers. CFC insisted that such release required customer approval, no matter how cumbersome or time consuming.</p> <p>In D.14-05-016, the Commission considered 12 “use cases” identifying specific requests for energy usage data. The Commission ultimately approved the release of usage data, subject to certain protocols, to local government entities, university affiliated researchers, and other government agencies consistent with CFC’s advocacy. The Commission did not approve release of usage data to commercial entities also consistent with CFC’s arguments.</p>	<p>D.14-05-016. Footnotes 28, 40, 47, 58. Conclusions of Law 8, 13.</p> <p>D.14-05-016, pp. 35, 43, 48, 73.</p> <p>D.14-05-016, pp. 51, 57, 68, 75, 79.</p>	
<p>3. Cost Recovery</p> <p>The IOUs claimed that they must be able to recover “either in their revenue requirements or through user fees, the full reasonable incremental costs the utilities incur to implement the data access program, including start-up and ongoing costs as well as costs associated with any special requests for information or analyses not addressed by the</p>	<p>Working Group Report, pp. 10, 63, 66, 88, 90, 91, 93, 94, 96.</p> <p>Opening Comments of the Consumer Federation of California on the Working Group Report on Energy Usage Data, pp. 4-5.</p>	

<p>energy data access program.”</p> <p>CFC maintained that the utilities have already been granted substantial recovery of costs associated with usage data collection, processing and presentation in rate cases as well as smart meter deployment cases. CFC urged the Commission to not allow any additional cost recovery related to data collection, storage, and dissemination.</p> <p>The Commission noted that the utilities currently provide access to data to requesting parties “as part of normal operations.” Thus, “to a certain extent, these costs are currently recovered by the base revenue requirement set in a general rate case.” This is consistent with CFC’s position. The Commission went further, however, and authorized the utilities to book incremental costs to a memorandum account and “seek recovery through an adjustment to revenue requirements in their next general rate case or in an application to recover these costs.”</p> <p>This is exactly what CFC proposed as far as it falls short of allowing costs to be automatically shouldered by the rate payers. The resulting decision will give the Commission and parties reasonable opportunity in the future to examine the costs and comment as to reasonableness.</p>	<p>Reply Comments of the Consumer Federation of California on the Working Group Report on Energy Usage Data, p. 5.</p> <p>D.14-05-016, p. 105.</p> <p>D.14-05-016, pp. 114-115.</p> <p>D.14-05-016, p. 105.</p>	<p>Verified, but duplicative of other parties, such as the UCLA and Haas research groups. Additionally, in its comments CFC suggested that utilities should recover costs from information requestors, not ratepayers, as the Decision ultimately decided.</p>
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?²	NO	ORA was a party to this proceeding.
b. Were there other parties to the proceeding with positions similar to yours?	YES	Verified
c. If so, provide name of other parties: California for Renewable Energy, Inc., Green Power Institute, EFF, and The Utility Reform Network		Verified
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: CFC did not duplicate arguments of ORA or other parties. There is always some confluence of opinion when more than one consumer group participates and the number of voices arguing a particular point can be just as persuasive as the argument itself. However, each group has a particular take on each issue, making their own original contribution CFC, however, specifically argued the Commission should not permit the dissemination of data to third parties for <i>commercial uses</i> at all and that the IOUs should not be permitted to simply charge any fees for whatever data program would be approved. CFC insisted that protecting the privacy of Smart Grid data is “cognate and germane” to the exercise of the Commission’s regulation and should take precedent over the needs of third parties.		Verified

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§§ 1801 & 1806):**

a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation	CPUC Verified
There will be privacy benefits for ratepayers based on CFC’s participation. CFC’s contributions accepted by the final decision will likely protect utility Customers’ consumption data. Benefits including a utility customer’s ability to easily protect their energy consumption data and the costs associated with their consumption in a comprehensible manner.	Verified

² The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>CFC's contribution assisted in advocating and helping to develop Smart Grid privacy rules. This will result in individual ratepayer benefits in the form of increased safety and security when it comes to a consumer's energy data.</p> <p>These contributions as well as others informed the record and the Commission's decision making process and will benefit ratepayers both now and in the future.</p>	
<p>b. Reasonableness of Hours Claimed.</p> <p>There will be privacy benefits for ratepayers based on CFC's participation, although it is difficult to estimate a specific impact, some of CFC's contributions accepted by the final decision will likely prevent the wide dissemination and misuse of utility customers' consumption data.</p> <p>CFC's contribution assisted in advocating and helping to develop Smart Grid privacy rules. This will result in individual ratepayer benefits in the form of increased safety and security when it comes to a consumer's energy data and avoided fees associated with those data. These contributions as well as others informed the record and the Commission's decision making process and will benefit ratepayers by saving their privacy now and in the future.</p> <p>CFC worked efficiently and recorded hours rounding down to the nearest decimal. The attorney fee hours are equal to just three weeks' time while the intervenor compensation claim preparation hours are equal to a day. Both hourly amounts are reasonable in light of the time dedicated, work performed, and product produced.</p>	<p>Verified, but still some reductions.</p> <p>Also, errors in timekeeping were discovered, and hours were not rounded down as stated.</p>
<p>c. Allocation of Hours by Issue</p> <p>See Attached Timesheet</p> <p>C = Distribution Center</p> <p>R = Privacy (Release of Data as described in use cases)</p> <p>ND = Cost Recovery</p> <p>W = Workshops</p> <p>GP = General Prep.</p> <p># = Where time entries cannot easily be identified with a specific activity code. For these entries, the allocation of time spent on activities can be broken equally.</p>	<p>Verified</p>

PROPOSED DECISION**B. Specific Claim:***

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Nicole Johnson	2013	126.2	\$310	Resolution ALJ- 287	\$39,122	111.1	\$290.00 ^[C]	\$32,219.00
Nicole Johnson	2014	4.5	\$310	Resolution ALJ- 287	\$1,395.0	4.05	\$300.00 ³	\$1,215.00
Donald P. Hilla	2014	2	\$555	Resolution ALJ- 287	\$1,110.0	2.0	\$400.00 ^[D]	\$800.00
Subtotal: \$ 41,627.00						Subtotal: \$34,234.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Nicole Johnson	2014	8.5	\$155	½ Resolution ALJ- 287	\$1,317.5	8.5	\$150.00	\$1,275.00
Subtotal: \$1,317.5						Subtotal: \$1,275.00		
TOTAL REQUEST: \$42,944.50						TOTAL AWARD: \$35,509.00		
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate.</p>								
Attorney		Date Admitted to CA BAR ⁴		Member Number		Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation		
Nicole Johnson		June 2006		242625		No		
Donald Hilla		June 1990		146198		No		

³ Application of Res. ALJ-303 2.58% COLA.

⁴ This information may be obtained at: <http://www.calbar.ca.gov/>.

C. Attachments Documenting Specific Claim and Comments on Part III:

Attachment or Comment #	Description/Comment
1	Certificate of Service

D. CPUC Disallowances and Adjustments:

Item	Reason
A	The Commission re-calculated the number of hours claimed by utilizing the actual number of minutes spent working on this proceeding. This reduced the total number of hours claimed to 123.45 hours for 2013 and to 4.42 hours for 2014 for Johnson.
B	Although Consumer Federation of California substantially contributed to the decision, some of its contributions were duplicative or non-substantive. We therefore reduce Johnson's hours by 10% in 2013 and 2014.
C	Consumer Federation of California failed to justify the requested 2013 hourly rate of \$305 for Nicole D. Johnson despite the fact that the Commission has not established an hourly rate for Johnson in past cases. Based on the Commission's own inquiry, the California State Bar website lists Johnson as an attorney in good standing admitted to the California Bar in June 2006. (See Part III.b above.) That means that Johnson was an attorney with seven years of experience in 2013, when working on this case. Pursuant to Resolution ALJ-287, the lowest hourly rate in the rate range for an attorney with seven years of experience in 2013 is \$290. Because Claimant presented no further justification, we award Johnson \$290 an hour for her work performed in this proceeding in 2013.
D	Consumer Federation of California requests a rate of \$555.00 per hour for work performed by Hilla in 2014. Documentation provided by CFC shows that Hilla has been an attorney for over 13 years, and therefore qualifies for the highest hourly rate range. Hilla's experience includes 23 years as a regulatory attorney with the California Department of Insurance. However, Hilla has no experience working in telecommunications or electricity issues, and no experience practicing before the Commission. Additionally, in this proceeding, his work was limited to review of filings. We therefore set Hilla's rate at \$400.00 per hour, well above the minimum rate of \$310.00 per hour for attorneys with 13+ years of experience.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(2)(6))?	Yes

FINDINGS OF FACT

1. Consumer Federation of California has made a substantial contribution to D.14-05-016.
2. The requested hourly rates for Claimant's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$35,509.00.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Consumer Federation of California is awarded \$35,509.00.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall pay Consumer Federation of California their respective shares of the award, based on their California-jurisdictional electric revenues for the 2013 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 10th, 2014, the 75th day after the filing of Consumer Federation of California's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1405016		
Proceeding(s):	R0812009		
Author:	ALJ Division		
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Consumer Federation of California	06/27/14	\$42,944.50	\$35,509.00	N/A	Duplication and overestimation of rates and hours.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Nicole	Johnson	Attorney	Consumer Federation of California	\$310	2013	\$290
Nicole	Johnson	Attorney	Consumer Federation of California	\$310	2014	\$300
Donald	Hilla	Attorney	Consumer Federation of California	\$555	2014	\$400

(END OF APPENDIX)